amusement, retaining the right to enter and make repairs, but not covenanting to repair. The plaintiff, while lawfully on the premises, was injured, owing to the premises having, by reason of negligence, become dangerous. *Held*, that the plaintiff has no cause of action against the defendant. *Shapiro* v. *Wendover Hall Co.*, 45 N. Y. L. J. 2082 (N. Y., Sup. Ct., Aug., 1911).

In the absence of an agreement to repair, a landlord is not liable for personal injuries to a tenant or a member of the tenant's family, guest, or servant, who stands in the same position as the tenant, due to the defective condition of the demised premises, where the defects are not hidden defects existing at the time of letting, known to him and unknown to the tenant. *Akerley* v. *White*, 58 Hun (N. Y.) 362; *Galvin* v. *Beals*, 187 Mass. 250. And even if he has agreed to repair, it has been held that he is not so liable, — either in tort, because the failure so to repair is a mere non-feasance, or for substantial damages in contract, because damages for personal injuries are not recoverable for such a breach. *Cavalier* v. *Pope*, [1906] A. C. 428; *Schick* v. *Fleischhauer*, 26 N. Y. App. Div. 210. He is, however, liable for the condition of the part of the premises under his control, both to the tenant and to third parties lawfully on the premises, except bare licensees. *Lang* v. *Hill*, 138 S. W. 698 (Mo.); *Miller* v. *Hancock*, [1893] 2 Q. B. 177. For personal injuries to third parties, moreover, where he makes a covenant to repair, the landlord is liable for the condition of the demised premises, according to the prevailing view, either because he retains his tort obligation of due care or to avoid circuity of action. *May* v. *Ennis*, 78 N. Y. App. Div. 552. See *City of Lowell* v. *Spaulding*, 4 Cush. (Mass.) 277, 279. But, as held in the principal case, in the absence of such a covenant, unless the premises were a nuisance at the time of letting, the landlord has no tort liability toward third persons. *Lane* v. *Cox*, [1897] 1 Q. B. 415; *Ahern* v. *Steele*, 115 N. Y. 203.

Malicious Prosecution — Basis and Requisites of Action — Garnishment Resulting in Consequential Damage. — The plaintiff's wages were by statute exempt from garnishment, but his employer was accustomed to discharge any workmen whose wages were garnished. The defendant, knowing this, attempted to garnish the plaintiff's wages, and, as a result, the plaintiff was discharged. The plaintiff then brought an action for malicious abuse of process. *Held*, that he may recover. *King* v. *Yarbray*, 71 S. E. 131 (Ga.).

For a discussion of the principles involved, see 24 Harv. L. Rev. 325.

Mechanics' Liens — Priority over Mortgage for Future Advances. — On a bill in equity to enforce a mechanics' lien for materials furnished, the question was whether a mortgage given to secure future advances to be made under a contract took precedence over the lien as to advances made subsequently to the acquisition of the lien and with no other notice of it than the understanding that the money advanced was to be used in erecting a building. *Held*, that the mortgage takes precedence as to prior advances only. *Allen Co.* v. *Emerton*, 79 Atl. 905 (Me.).

Like most mechanics' lien statutes, the Maine law simply provides that the lien shall attach to any interest which the owner — that is, the equitable owner — has in the land. Rev. Stats. of Me., 1903, c. 93, § 29. Where land has been mortgaged, the mortgagor's interest obviously includes all rights not already granted to the mortgagee. If the mortgage is given as security for merely optional advances, some courts hold that it has no effect upon the equity of redemption until the advances have been made, and that, consequently, any second incumbrance takes precedence, when recorded, over the first mortgage as to subsequent advances. *Ladue* v. *Detroit & Milwaukee R. Co.*, 13 Mich. 380. By the weight of authority, however, a recorded mortgage

is a potential lien, and gives security for all advances made on the faith of it before receipt of actual notice of a second lien. *Ackerman* v. *Hunsicker*, 85 N. Y. 43. *Cf. Hopkinson* v. *Rolt*, 9 H. L. Cas. 514. If, on the other hand, the mortgagee has bound himself to make advances, he immediately becomes, by the better view, a *bonâ fide* purchaser to the full amount of his contractual liability, and no subsequent incumbrance can affect his rights. *Moroney's Appeal*, 24 Pa. St. 372; *Blackmar* v. *Sharp*, 23 R. I. 412. The English rule, however, accords with that of the principal case. *West* v. *Williams*, [1899] 1 Ch. 132.

MECHANICS' LIENS — WHAT CONSTITUTES MATERIALS FURNISHED. — The plaintiffs furnished lumber to make forms for a concrete building. These forms did not remain in the building permanently, but were made valueless by the use. A statute provides that "a person who performs labor or furnishes materials . . . for the improvement, in any manner, of real estate . . . shall have a lien thereon." *Held*, that the plaintiffs are entitled to a lien. *Avery* v. *Woodruff*, 137 S. W. 1088 (Ky.).

By the better view, a mechanics' lien statute which merely gives a new remedy to enforce a right is to be construed liberally. *Springer Land Association* v. *Ford*, 168 U. S. 513. See BOISOT, MECHANICS' LIENS, §§ 34–36. *Contra*, *Pugh Co.* v. *Wallace*, 198 Ill. 422. But even if it is considered to be in derogation of the common law, in Kentucky the principle of broad interpretation must be applied. RUSSELL, STATS. OF KY., 1909, § 4174. On this view, it has been decided by cases in which dynamite was used in construction, that to come within the words of the statute, physical incorporation into the structure of the materials furnished is not essential. *Giant-Powder Co.* v. *Oregon Pacific Ry. Co.*, 42 Fed. 470. On the other hand, strict construction has led to the decision that oil furnished to a railroad is not within the terms of a similar statute. *Central Trust Co.* v. *Texas & St. Louis Ry. Co.*, 23 Fed. 703. Taking the liberal view, the principal case appears to be closely analogous to the dynamite case, and accordingly a proper interpretation of the statute. To prevent an undue extension of the decision and to reconcile it with authorities, it is suggested that a proper delimitation would be to exclude material, such as scaffolding, which can be used again. *Oppenheimer* v. *Morrell*, 118 Pa. St. 189.

MUNICIPAL CORPORATIONS — LIABILITY FOR TORTS — FAILURE TO ENFORCE ORDINANCES RELATING TO USE OF STREETS. — A city passed an ordinance making it unlawful for vicious dogs to run at large and requiring police officers to kill any such dogs. Through failure of the officers to enforce the ordinance, the plaintiff was bitten. He sues the city on the theory that this was a failure to exercise a corporate rather than a governmental power. *Held*, that he may not recover. *Addington* v. *Town of Littleton*, 115 Pac. 896 (Colo.).

Constructing and maintaining streets in a reasonably safe condition is a corporate duty for the breach of which an action lies at common law. *Denver* v. *Maurer*, 47 Colo. 209. But making and enforcing ordinances regulating the use of streets is an exercise of governmental power, and for failure to enforce such ordinances there is no liability in the absence of statute. The principal case, although near the border-line, seems rightly decided. It represents the weight of authority. *Rogers* v. *City of Binghamton*, 101 N. Y. App. Div. 352, aff. 186 N. Y. 595; *Hull* v. *Roxboro*, 142 N. C. 453. *Contra*, *Taylor* v. *Mayor, etc. of Cumberland*, 64 Md. 68. The doctrine of the minority is criticized in 15 HARV. L. REV. 736.

NEW TRIAL — GROUNDS FOR GRANTING NEW TRIAL — PREJUDICIAL CONDUCT BY TRIAL JUDGE. — At a trial for murder the judge in making rulings did things which, probably negligible if limited to one or two instances, in the aggregate were calculated to create an atmosphere of prejudice against the de-